IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 874 of 1985

For Approval and Signature:

THE *HON'BLE* MISS JUSTICE R.M.DOSHIT

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1	Whether Reporters of Local Papers may be allowed to see the judgment?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyof the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge?

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HASHANBHAI ISMAILBHAI - Petitioner(s)

Versus

BAI AMINABIBI WIDOW OF MIYA MOHMED KALUBHAI &5 - Respondent(s)

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Appearance :

MR LR PATHAN for Petitioner

MR ANIL C THAKORE for Respondent No(s).: 1.

NOTICE SERVED for Respondent No(s).: 2,3,5.

DELETEDfor Respondent No(s).: 4.

RULE SERVED for Respondent No(s).: 5.

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 20/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 29th December, 1984 passed by the learned Assistant Judge, Bharuch in Regular Civil Appeal No. 111 of 1983, the respondent-plaintiff in Regular Civil Suit No. 117 of 1980 has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel &Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Act**"]. Pending this Revision Application, the plaintiff has passed away. His heirs and legal representatives have been substituted.

The plaintiff instituted Regular Civil Suit No. 117 of 1980 in the Court of learned Civil Judge [JD], Bharuch for recovery of possession of the suit premises, a residential house situated at Bharuch. The possession was claimed on the grounds that the suit premises was leased to the defendant no.1 for a monthly rent of Rs. 7/=; that he was in arrears of rent since 1st July, 1975; that he did not pay the amount of rent due; that the defendant no.1 had without the consent of the plaintiff unlawfully sublet the suit premises to the defendant no.2 and that the defendant no. 1 had committed breach of condition of tenancy. The learned Civil Judge was pleased to hold that the defendant no. 1 was not the tenant in the suit premises; that the defendant no. 2 was the tenant in the suit premises; that the defendant no. 2 was in arrears of rent since 1st July, 1975. The suit notice was served upon the defendant nos. 1 &2 and both the defendants had refused to receive the suit notice. The suit notice was held to have been served upon the defendants no.1 and 2.

The learned Civil Judge was, by judgment and order dated 31stJanuary, 1983, pleased to pass decree for eviction against the defendant no.2 and for recovery of amount of arrears of rent. Feeling aggrieved, the defendant no. 2 preferred above referred Regular Civil Appeal No. 111 of 1983 in the Court of learned District Judge, Bharuch.

The Appeal was heard and decided by the learned Assistant Judge, Bharuch. The plaintiff did not file cross objection before the lower appellate Court nor did the plaintiff assail the finding with respect to the tenancy recorded by the trial Court. The lower appellate court was pleased to hold that the notice of demand as envisaged by Section 12 (2) of the Rent Act was not given to the defendant no.2. No decree for eviction, therefore, could have been passed against the defendant no. 2 on the ground that he was in arrears of rent. The lower appellate court accordingly set-aside the decree for possession passed in favour of the plaintiff and dismissed the suit. Therefore, the

present Revision Application.

Section 12 (2) of the Rent Act provides that, "**..No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882**." Thus, it is mandatory for a landlord to give a notice of demand of standard rent and permitted increase to the tenant prior to the institution of the suit. In the present case, notice as envisaged by Section 12 (2) of the Rent Act [*Exh. 29*] was given on 4th February, 1980. The notice was addressed to both the defendants nos. 1 &2. It was stated that the defendant no. 1 was the tenant in the suit premises; that he was in arrears of rent since 1st July, 1975; that the defendant no. 1 had sublet the suit premises to the defendant no. 2. The tenancy was terminated. The defendant no. 1 was specifically addressed to handover the possession and to pay Rs. 385/=; the arrears of rent due. It was also stated that the said notice was sent to defendant no. 2 as the defendant no.2 was the sub-tenant in the said premises. Evidently, no notice of demand as envisaged by Section 12 (2) of the Rent Act was given to the defendant no. 2. The defendant no. 2 was not called upon to pay arrears of rent due or to handover the possession of the suit premises. In my opinion, the lower appellate Court has rightly held that in absence of notice of demand as envisaged by Section 12 (2) of the Rent Act, the eviction decree against the defendant no. 2, the tenant, cannot be passed.

No other contention is raised before me. The Revision Application is dismissed with cost. **Rule** is *discharged*.

[Miss R.M Doshit, J.]

*Prakash**